ARGUMENT

OF

EVERETT W. BURDETT, ESQ.,

ATTORNEY OF THE

MASSACHUSETTS ELECTRIC LIGHTING ASSOCIATION,

AGAINST

THE PROPOSED BILL TO ENABLE CITIES AND TOWNS TO OWN AND OPERATE GAS AND ELECTRIC LIGHT PLANTS FOR MUNICIPAL AND COMMERCIAL PURPOSES.

COMMITTEE ON MANUFACTURES,

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Messrs. James W. McDonald . . . . . Middlesex.
Aaron Low . . . . . Essex.
H. Torrey Cady . . . . . Berkshire.

Of the Senate.

Messrs. Michael J. Murray . . . . . Fitchburg.
Charles H. Baker . . . . . Lynn.
Eugene M. Moriarty . . . . . Worcester.
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Clarence G. Coburn . . . . . Lowell.
Daniel R. Child . . . . . Swanzey.
George K. Knowlton . . . . . Hamilton.
John Golding . . . . . Boston.

Of the House.

CLOSING ARGUMENT OF E. W. BURDETT, ESQ.

Mr. Chairman and Gentlemen, — I fully appreciate the patience, courtesy, and fairness which this committee has exhibited towards both sides throughout this investigation. The hearings have been extended, not to say tedious. We come now to a portion of the proceedings which, in some view, may be unnecessary, and therefore all the more tedious. But inasmuch as it is always the rule of judicial tribunals that a jury shall not decide a case until after all the evidence is in and the arguments of counsel have been heard, I assume that this tribunal, not less than a jury, is open to whatever is said in candor and fairness upon the propositions which are involved.

The Proposed Legislation.

What are the propositions involved? What is the nature of the legislation which it is desired to engraft upon the statute books of Massachusetts? In a word, it may be stated as a proposition to allow any city or town in the Commonwealth, under general legislative permission, without reference to any of the special circumstances of the case, to engage in a commercial business, — the business of manufacturing, distributing, and selling gas and electricity. The scope of the proposition is so broad as to allow any city or town in the Commonwealth, whatever may be the local conditions, to supply those two commodities for a triple use; namely, for lighting, heating, and power. Two of these uses are to-day of great consequence. The electric light is used, as we all know, to a very extensive degree. The generation and transmission of electric power has also come to be one of the most important industries in our more thickly settled communities, and is growing with a rapidity which no one appreciates except those in actual contact with the business. The subject of supplying heat by electricity is, so far as I know, as yet undeveloped. But for the important and immediate objects of supplying light and power, it is proposed to enable all or any of the municipalities of the Commonwealth to furnish either gas or electricity. Not only so; the ambitious bill which is before you, and the only

one which is under consideration for the present, proposes to allow cities and towns not only to supply themselves and their inhabitants with these products for the purposes named, but also to supply any adjoining city or town and the inhabitants thereof with the same things for the same purposes. The scope of this legislation will be found in sections 1 and 8 of the proposed law, constituting, as I think I can fairly and soberly say, one of the most sweeping, one of the most dangerous, and one of the most extraordinary suggestions of legislation which could be embodied in a single bill. Under its provisions, in Boston, for example, the municipal "manager of gas and electricity" might have the entire control of the manufacture, distribution, and sale of all the gas and of all the electricity which might be required for light, heat, or power, not only in the city of Boston and to its inhabitants, but in no less than six adjoining cities and ten adjoining towns and to the inhabitants thereof — in all, nearly one million people. To say that that is a serious proposition, goes without saying. To say that it is a proposition which should not be accepted without the most plenary proof of its advisability, goes without saying. It is a step, either for good or bad, fraught with the most momentous consequences.

The Remonstrants.

Who remonstrate against this legislation? In the first place, let me refer to the remonstrants whom I have the honor to represent, — the electric lighting companies. There are in active business to-day in Massachusetts sixty-one companies engaged exclusively in the manufacture and sale of electric light and power. Invested in those companies is capital to the extent of $5,452,025, contributed by 2,300 stockholders.

All this investment is in the stock of the corporations. There is also invested in the bonds of these companies, by other persons than the 2,300 I have referred to, $2,082,944; making a total investment in the stock and bonds of companies exclusively engaged in the electric light and power business in Massachusetts of $7,534,969. The estimated value of the electric lighting departments of gas companies, a list of which may be found on pages 42 and 43 of the last report of the Gas and Electric Light Commissioners, is $1,193,538. This sum increases our total to $8,728,507. But that is not all. I add to those figures the sum of $305,000, the amount of the capital invested in two cor-

porations under lease to another, which are not included in the returns of the latter, and which do not themselves make returns. They either have been or are about to be purchased by the company to which they have heretofore been leased. Adding their capital and bonds to the figures above given from the report of the Gas and Electric Light Commissioners, we have a total investment in the electric lighting and power business of Massachusetts, on the 30th day of June, 1890, of $9,033,507.

There should be added to the 2,300 electric-light stockholders the number of stockholders in gas-light corporations in the Commonwealth, amounting to 4,725, making a total of 7,025 people whose investments are directly touched by the legislation which is proposed. Nor do these numbers include the employees of the companies, who are quite a considerable number. It is estimated that throughout the United States the number of persons employed by electric-lighting companies is upwards of 300,000.

General Collins. — About 3,000 in Boston alone?

Mr. Burdett. — I think it is correct that in Boston alone there are about 3,000 persons directly dependent, as wage-earners, upon the electric light and gas industries. In this same connection I ought also to refer to another fact, which is important, — that there are a number of other industries more or less directly dependent for their prosperity and success upon the electric-lighting industry. Take the case of the steam-engine. Ten years ago, when electric lighting started, a steam-engine fit for the purpose was unknown. It has been because of the demand of electric-lighting companies for engines decidedly superior to those which used to be considered good enough for other purposes that the steam-engine has received its wonderful development of the last ten years. Then take the manufacture of carbons, which are used exclusively in electric lighting. It gives employment to a great many people and puts in circulation a great deal of money. Take also the increased consumption of copper, iron, coal, and other supplies, arising out of the demands of the electric-lighting industry, and the aggregate addition to the business of the country is very large.

The passage of the legislation contemplated would inevitably impair existing investments in all these lines of business, and would retard if not prevent their future development.

I was much struck, Mr. Chairman and gentlemen, with the statement of Mr. Batchelder, the treasurer of the Salem Electric

Lighting Company, — the company which on the whole seems to have been more successful, according to the returns, than any other corporation of its character in the Commonwealth. He said, "We have paid dividends, and we are very proud of it. Our dividends have amounted, on the average, from the time we started, to seven per cent. But in order to get an average of seven per cent., upon one occasion we divided a surplus which had been accumulating for seven or eight years." So far from being ashamed of the fact that he and other business men in Salem had put their money into this local enterprise, which would tend for the good of the community in which it existed, he was proud of it. So far from apologizing for his opposition to this bill, he said that he thought he had the right to demand protection for the local capital invested in this enterprise, which is contributing its due proportion towards sustaining the public burdens. If that be true of an electric-lighting company in Salem, why is it not true of all the electric-lighting companies in Massachusetts? Why have I not the right to say that the $9,000,000 directly invested in this business within the last ten years, contributing its due proportion to the public treasury, should have the right to look to you for protection instead of anticipating hostile action at your hands?

Now, mind you, Mr. Chairman, if it were true that, notwithstanding what I have said, these corporations had abused the privileges which the communities had given them; if they had not given a fair equivalent for the money paid them; if they could be justly characterized as grasping monopolies, not entitled to the reasonable consideration of reasonable men, — much of the force of what I have to say would be broken. But what is the fact about it? Look, in the first place, into your own towns and cities, — and I make the statement at large, without having in mind any particular town or city, — and answer yourselves the question, whether or not the electric-lighting companies in your towns or cities are not managed, officered, and owned by the best citizens among your constituents. Where have you heard of scandals in the administration of electric-light plants in Massachusetts? Where have you heard anything definite to justify the cry of corruption on the part of these corporations? What man can put his finger upon one scintilla of proof of that outrageous charge? Not one. These companies have, you will admit, performed a public service for the Commonwealth at large, and for the different cities and towns in which they

exist; they have introduced a new and powerful illuminant to your streets; they have added comfort to your homes; they have made it easier for you to do business; they have, in a sensible degree, been instrumental in the prevention of crime; they have appreciably increased the taxable valuation of your property; they have made every town and city in which they burn, more desirable as a place of residence, and more advantageous as a place of business. They have not been monopolists in any sense of the word. What is a monopoly? Is it not the enjoyment of some privilege from which others are excluded, and, in the popular sense, from which undue profits and advantages are derived? I think that is a fair statement of it. Does that definition apply in any sense to the electric-lighting companies in Massachusetts? Have not any three of us the right to organize a company under the general law? and having organized that company, have we any privileges which do not equally belong to any other three citizens of the Commonwealth? And what would be our return, in case we did? What has been the return to the public-spirited citizens who have heretofore put their money into this enterprise? Let us see. They have advanced the interests of the Commonwealth at large, and of the particular cities and towns in which they are established, vastly more than they have advanced their own. And for what return?

Profits and Dividends.

Out of the sixty-one companies in active business in Massachusetts on the 30th day of June, 1890, only twenty-two of them succeeded in paying any dividends for the preceding year. Out of the fifty-six companies in active operation the year before, only fifteen succeeded in paying any dividends.

The average rate of dividends paid by the twenty-two companies out of the sixty-one in business last year was 4.86 per cent. for each company. The other two-thirds of the companies paid no dividend at all. That dividend, when divided between all the companies in active operation, would amount to only $1\frac{3}{4}$ per cent. for each company. But it may be said that that is not a fair statement of the matter, and that we ought to ascertain the rate of dividend upon the whole amount of capital employed. Very well; let us do so. The total amount paid in dividends equalled only 2.8 per cent. on the total amount of the capital actually invested.

But, it may be said, or intimated, or insinuated, that the companies are keeping back a portion of their profits. In answer to that, I will say, that if an electric-lighting company does not keep back a portion of its profits, but pays them all out in dividends, it is violating the first principles of business. No man would have the hardihood to stand before this committee, after listening to the evidence which has been brought out here, and say that the amount to lay by for contingencies, depreciation, surplus, and the exigencies of the business, ought not to be very considerable; and you would say, I feel sure, that if the companies earned ten per cent. they would not be justified in declaring more than six per cent.; that, at least, four per cent. ought to be retained for depreciation, damages, contingencies, and other expenses of that character. If you will take the report of the Gas and Electric Light Commissioners to which I have referred (the last report which has been published, full of exact and complete figures), you will find that the total amount earned, that is, the total net profits of the electric-lighting companies in Massachusetts, up to the 30th day of June, 1890, amounted to only 6.3 per cent. upon the entire amount of capital actually invested. Very wisely, very properly, very necessarily they have retained a portion of the net earnings for the purpose of meeting the contingencies to which I have referred, — not enough, but as much as has been possible under existing conditions.

There has been one very unjust thing said in the public press during the time that these hearings have been in progress; so unjust that I ought to call attention to it, because it has had a wider circulation than anything that has yet been said. It reads as follows: —

"E. W. Burdett, attorney for the electric companies, says that they are just able to make both ends meet, and does not want towns on that account to go into the business. For such feeble concerns they manage to pay large dividends and support a large lobby about the State House. The baby plea will hardly be accepted. The "Journal" to-day declares against municipal ownership."

There is just one grain of truth in that bushel of chaff, and that is that the "Boston Journal" had that day declared against municipal ownership. But I did not know of it until I read it in this paper. I had not said that the companies are just able to make both ends meet; I said that that had been the case up to this time.

These companies are now beginning to pay dividends upon the capital invested. The statement that "for such feeble concerns they manage to pay large dividends and support a large lobby about the State House," ought to be characterized in the severest terms. That they do not pay large dividends is shown by the report of the Gas and Electric Light Commissioners, made up of sworn figures, to which I have already referred; and that they maintain a lobby, large or small, at the State House, or that they ever have, is absolutely false.

Mr. Fairbanks. — Mr. Burdett, if you please, where was that printed?

Mr. Burdett. — I do not like, unless it is really required, to give the name of the paper. The item is discreditable to it, and unless you insist I would rather not name it. I should like to bury that statement. But I will give it to you, and will be perfectly willing to do so, if you want it, any of you. Everybody has seen it in the public press of Boston.

The Chairman. — It is a Boston paper, is it?

Mr. Burdett. — Yes, sir.

Objections.

Now, Mr. Chairman, why do these corporations object to the policy which I have indicated? I will not now stop to state the public objections; I may have occasion to do so later on; but for the present I will confine myself to the inquiry, Why do these private corporations object? What is there in this legislation that is necessarily or probably injurious to their interests? It is because this legislation, if passed, will, as surely as the sun rises, impair and very largely destroy their investments. You may think that a strong statement; it is true nevertheless. Why are these corporations up here at the State House, represented by the officers of their association and by counsel, if they do not appreciate the vital importance of the issues which are pending? They are the best judges of what the probable effect upon their business would be, and their action is sufficient demonstration of what they believe it would be. Let me give you, however, some reasons for the statement that it would impair and perhaps destroy the investments of private capital which have been made.

In the first place, it would absolutely wipe out all opportunity to do public lighting. A city or town going into this business would light its streets and public buildings, as a matter of course. That would

deprive many of the local companies of a portion of their revenue without which it would be impossible for them to prosecute their business to any advantage whatever. In the second place, towns and cities not being corporations organized for purposes of profit, could, if they saw fit, compete for private lighting without much, if any, reference to the cost of production. They could thus not only deprive the corporations of a large portion of their revenue, but could cripple them in the prosecution of other branches of their business. Under such circumstances, it would be impossible for the company to compete with any satisfaction. In the third place, think of the idea of a private corporation competing with a municipal corporation, when the former is wholly dependent upon the latter for its rights in the public streets. Not only must the corporation obtain its locations for poles and wires, and its permits for digging up the streets, by the leave of the public bodies who are, under the proposed legislation, to be allowed to prosecute the same business in competition; but there are pending before this Legislature to-day numerous propositions to further enlarge the powers of municipalities in the matter of their control of the rights and privileges of these private companies. In the fourth place, the existence or the possibility of such unfair conditions would discourage enterprise and drive capital out of the business. No man of business sense would for a moment think of investing his money in a private lighting plant run in competition with a town or city in which it existed. Not only that, but no man who had stock in such a corporation but would get rid of it upon any terms procurable.

But, finally, and perhaps more important than anything else, is the outrageous power of *municipal confiscation* which is embodied in the bill before you, — embodied in the bill which was under consideration last year, and embodied in every bill presented by the "nationalists." They care nothing for invested capital. When people get capital to invest, they ordinarily cease to be "nationalists." I refer especially to sections 13, 14, and 15 of the bill pending before you, which practically legalize spoliation. The only redeeming feature of a municipal ownership bill would be a fair and reasonable provision for the purchase of existing private plants. I do not mean to say that that would remove all objection. Far from it. I do not mean to say that that would constitute a reason why the legislation could in fairness be passed; but I say it would be the only redeeming feature in an otherwise absolutely objection-

able proposition. The bill which was first passed by the House of last year was identical in terms with that submitted by the nationalists to the committee and unanimously rejected by the committee. It contained no provision whatever for the purchase of existing plants by the municipalities availing themselves of the provisions of the act. This feature was so manifestly unjust and oppressive, practically legalizing spoliation, that an amendment was adopted which in some measure met that objection. It will be found in House Document No. 550 of last year. It was as follows : —

Section 13. If in any city or town there exists at the time of the passage of this act, gas or electric light plants, owned and operated by persons or corporations acting under the laws of this Commonwealth, such plants shall be purchased by said cities and towns, in the manner provided in this section, before such cities and towns establish a system of lighting under this act. The price to be paid therefor shall be the actual cash value of the property owned by said persons or corporations, and no privileges, rights, or immunities theretofore given to said persons or corporations by said cities or towns or by the laws of the Commonwealth shall be deemed to be the property of said persons or corporations within the meaning of this section. The value of said existing plants for this purpose shall be fixed by a board of three persons, one to be chosen by the person or corporation owning such plants, one by the city or town in interest, and one by the two thus selected. Their decision shall be final when accepted by said city or town. No town or city shall establish a gas or electric light plant under the provisions of this act until it shall have acquired under the provisions of this section such plant as shall exist in such city or town at the time of the passage of this act.

It will be seen that this amendment contained some elements of fairness. The price to be paid for the local plant was "the actual cash value of the property," without any allowance for "privileges, rights, or immunities" received from the city or town or from the Commonwealth, and the valuation was to be arrived at by an impartial appraisal.

This amendment constituted the only redeeming feature of the bill, but was almost immediately stricken out, and sections 13, 14, and 15, as they stand in the bill before you (House Document 573 of 1890), were substituted therefor. These new sections, instead of remedying the unjust and spoliative character of the nationalists' bill, aggravated its objectionable features and made

them worse than before. They involve so momentous an issue to the corporations which I represent that you will pardon me in a brief analysis of them.

In the first place, the plants to be purchased by the cities or towns availing themselves of the provisions of the act are confined by section 13 to those existing at the time of the first vote of the said city or town looking to municipal ownership. This would necessitate the local company standing still until the matter was again voted upon in the following year. Whatever additions or improvements were made after the first vote and before the final taking by the town or city could not be sold under the provisions of the act. On the other hand, if the final vote of the city or town as to going into the business should be adverse to the first, the company would have been handicapped and impeded in the prosecution and extension of its business without any compensation therefor. It would be difficult to frame a law more discouraging to business enterprise or more hindering to legitimate industry.

But the most oppressive feature of section 13 is the provision that the city or town shall purchase "only such property as by reason of its being real estate or attached to real estate cannot be removed and be available elsewhere without material loss, injury, or expense." This would not include wires, lamps, and fixtures (the most expensive part of the equipment of an electric-light company) or the dynamo-electric machines, which are movable, —in fact, nothing but the company's land, buildings, poles, set boilers, and such other items (if any) as are "attached to real estate." Under this provision the company would be obliged to sell one part of its plant, and thereby ruin the value of the other part. No provision is made in the bill for the cost of taking down the wires, lamps, and fixtures and removing the electrical machines, which, when so taken down and removed, would be second-hand. In the absence of any further opportunity to use them, they would be little less than junk in the hands of their owners. This feature of the bill is unqualifiedly and outrageously bad. The bill might as well be left as drawn by the nationalists, without any provision to prevent the destruction of the value of existing plants, as to put in such a partial, one-sided, and unjust provision as that referred to. It would, in practice, amount to little less than confiscation.

Contrast with this feature of the bill the provisions of the municipal water act in our statutes (Pub. Stats., ch. 27,

sect. 27) permitting a municipality to purchase from a private water company "its *whole* water rights, estates, franchises, and privileges, and thereby become entitled to *all* the rights and privileges and subject to *all* the duties and liabilities of said corporation."

In the third place, section 13 gives the city or town the option to purchase the local company's gas plant or its electric plant, according as the city or town has decided to go into the gas or electric light business. In other words, a company engaged in furnishing both gas and electricity (as many companies are) would practically be compelled to split its business in two, retaining only that portion which the municipality does not elect to take. With a considerable part of the property formerly in use by it rendered second-hand and incapable of use except elsewhere, and with its business split in two, such a company would find it difficult, if not impossible, to ward off bankruptcy.

Have the gas and electric companies of Massachusetts done anything to deserve such treatment at the hands of the Legislature? On the contrary, they have established a new and useful industry, requiring the investment of millions of money, and the employment of thousands of men; and, by so doing, have contributed both to the comfort and luxury of life, and to the prosperity of the communities in which they do business.

Contrast with this provision that of the English electric-lighting act of 1882, as amended by the Act of 1888, which provides that if, upon the expiration of the forty-two years in which the corporation has the right to prosecute its business undisturbed by the municipality, the latter elects to purchase it, it must purchase all the property of the company within its territorial limits, and in case it does not purchase that part, if any, which lies outside its limits, it must pay for "*any loss occasioned by severance.*"

Sections 14 and 15 merely relate to the details of carrying out the provisions of section 13; unless the provisions of the latter portion of section 14, which are very awkwardly expressed, are held to mean that the purchasing city or town has the further option to purchase any part or parts of existing plants in addition to the portion designated section 13.

Without further comment on my part, I think that the inequitable, unfair, and unbusiness-like character of the propositions involved in these sections will be at once appreciated by the committee. I cannot believe that a single one of you is so unfair as to

desire to put upon the statute book a law which will operate as I have indicated this would do.

In contrast to the proposed legislation I ask you to look at the provisions of our statutes enabling towns to buy water plants, to which I have already called attention. It contains no such outrageous provision as that to which I have just referred. It provides that a town "may, for the purpose of supplying water to its inhabitants, purchase of any municipal or other corporation, the right to take water from any of its sources of supply, or from pipes leading therefrom; or may purchase its whole water rights, estates, franchises, and privileges, and thereby become entitled to all the rights and privileges and subject to all the duties and liabilities of said corporation; or may make a contract therewith for a supply of water."

Ever since the formation of the constitution of our State water companies have been organized here and there. These water acts, if I remember rightly, date back to 1794 or 1796, — certainly quite a number were passed before the beginning of this century. From that time down they have been increasing in number, until, finally, within the last ten or twenty years, the number has grown to be enormous. There have been, in the last twenty-five or thirty years, a great many acts passed, enabling cities and towns to own and operate water plants. But as old as that subject is, there has never yet been put upon the statute book a general law permitting towns and cities to enter upon the supply of water to its inhabitants, except as just stated. The Legislature has required every town and city desiring to do so to make special application, and show special reasons why the application should be granted, except that it has allowed them, without special legislative permission, to purchase existing private water plants. That is the only way, to-day, by which a town can go into the supply of water where a private company already exists. And I remember very well that Mr. Russell, the present Governor of the Commonwealth, in his argument before this committee two years ago, said that, so far as his investigations went, there had never been a case where a city or town had been allowed to go into the water business where private capital was already invested. I have not had an opportunity to investigate that myself, but I take the statement from Mr. Russell's printed argument.

Now, in England, they have an electric-light law, passed in 1882 and amended in 1888. I understand it to have been drawn

by, or under the direction of, Mr. John Chamberlain, an English statesman who is said to have no partiality for private corporations. I am informed that, at the time the act was passed, he was president of the Board of Trade. This act will be found in 45 & 46 Victoria, chapter 56, section 27 (1882), amended by 51 & 52 Victoria, chapter 12, section 2 (1888). What do these acts provide? Acts drawn as carefully as such acts are drawn in England are well worth our careful consideration. In the first place, they do not allow a city or town in which a private plant is established to act upon the question of its purchase until after the local company has had forty-two years' opportunity to get its money out of the enterprise. By the law of 1882 it was twenty-one years, but by the law of 1888 it was made forty-two years. And if the town fails to vote to purchase, within six months after the expiration of the forty-two years, it must wait ten years longer before it can again avail itself of the right to purchase. This gives some security to capital, and encourages its investment.

If the municipality buys, what must it buy? It must buy all the plant and property within the town or city, at "their fair market value at the time of the purchase, due regard being had to the nature and then condition of such buildings, works, materials, and plant, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same to the purposes of the undertaking, and, where a part only of the undertaking is purchased [that is, where the city or town does not purchase that part of the property which lies without its limits], to any loss occasioned by severance; but without any addition in respect of compulsory purchase or of good-will, or of any profits which may or might have been or be made from the undertaking, or of any similar considerations." That is a fair and reasonable provision. In case of disagreement, the appraisal is to be made by arbitration.

People who are willing to invest their money in this enterprise in Massachusetts ought to have some assurance that, for at least a few years, they will not be obstructed in their business and will not be liable to municipal interference. That would be a valuable safeguard, and it is one which the companies might reasonably ask the Legislature to grant them.

So much, in brief, for the private objections. Now for some of

the objections of a public nature. You must consider both. You have, I think, no more right to disregard one than the other.

Public Objections.

I will not attempt to state all of the objections which can be raised to the proposed legislation from the stand-point of public policy, but only a few of them.

You have had before you private citizens, as respectable and responsible as any in the communities from which they come, who, with entire disinterestedness, have stated their objections as citizens. From Peabody you had two presidents of national banks, one president of a savings bank, one lawyer, one merchant, and one minister. From Boston, I understand, you had Mr. Cotting the other day, as conservative an investor and custodian of property as the city of Boston contains. He put it right. I read his testimony this morning. No matter how the questions were put to him, he had the fundamental idea all the way through, that the distinction between water on the one hand, and gas and electric light on the other, was the distinction between a natural article, necessary for everybody, and a manufactured article of commerce. I will have occasion to refer a little later on to this distinction — the difference between the municipal distribution to citizens of that which public necessity requires for the health of the community at large, and the prosecution of the business of manufacturing and selling an article of commerce, which is at most a convenience and is usually a luxury.

The municipal supply of water is within the proper scope of municipal administration; but the commercial supply of gas and electric light revolutionizes all our ideas of the true functions of town or city governments in Massachusetts.

In this connection I have a right to refer, I think, to a statement by a gentleman who, though now removed from private practice, would not utter as an attorney views of public questions which he did not entertain as an individual. A little less than two years ago, before this same committee, when the various propositions for municipal ownership of lighting industries had been fairly stated, Hon. Wm. E. Russell said: "The matter now fairly before the committee involves a most serious question of public policy, namely, whether it is wise, necessary, and safe to reverse the policy that has governed towns and cities in this Commonwealth for two hundred and fifty years, and allow them to go

into these enterprises with all the hazards, risks, and liabilities that attend the investment of money in private industry?" There is as succinct a statement of the question before you as could well be made.

The lawyers on the committee, perhaps, more than the laymen, will attach great importance to what our judiciary have pointed out as the proper province of town and city governments in Massachusetts; and I would like to call the attention of such to the utterance of Mr. Justice Wilde, in 11 Pick., 399, in which he expressed the views of the Supreme Court of Massachusetts as at that time constituted. Speaking of the limitation upon the powers of town governments he said: —

"This limitation upon the power and authority of towns to enter into contracts and stipulations is a wise and salutary provision of law, not only as it protects the rights and interests of the minority of the legal voters, but as it may not unfrequently prove beneficial to the interests of the majority, who may be hurried into rash and unprofitable speculations by some popular and delusive excitement, to the influence of which even wise and considerate men are sometime liable."

What apter language could be used to characterize the present situation?

Chief Justice Shaw said something which is worth repeating in this connection, in a case reported in 23 Pick., 75. Referring to the individual liability of every citizen for the debts of the municipality in which he lives, he says: —

"It is obvious, therefore, that if this liability were to extend to unlimited and indefinite objects, the citizen, by being a member of a corporation, might be deprived of his most valuable personal rights and liberties. The security against this danger is in a steady adherence to the principle stated, that corporations can only exercise their powers over their respective members for the accomplishment of limited and well-defined objects."

Let me refer again to the argument of the gentleman whom I first quoted. He read with entire approval the following extract from the great work of Judge Dillon on Municipal Corporations: —

"To clothe them with powers to accomplish purposes which can better be left to private enterprise, is unwise. Their chief function should be to regulate and govern. To invest them with the powers of individuals or private corporations, for objects not

pertaining to municipal rule, is to pervert the institution from its legitimate ends, and to require of it duties it is not adapted satisfactorily to execute."

And after further consideration, Mr. Russell expressed his conclusions in words so apt and eloquent that it is a delight to quote them. He said: —

"I am one of those who believe that it is the duty of government not to crush out individual enterprise and energy, but to aid it. I believe in the principle of government helping men to make the most of themselves, and industries to make the most of themselves, but not in a paternal government to which we must all look for leave to act or think or speak. And I believe on that principle it is of doubtful expediency for a State or a government to undertake to control in this way private enterprises."

And I do not think that there is a thing inconsistent with that statement in his inaugural address as Governor to the present Legislature. Referring to the enlargement of the powers of cities and towns, he says he thinks that such enlargement may be made to advantage, and then adds: "I therefore commend to your consideration the subject of enlarging their powers by general laws, especially in matters of taxation, franchises, municipal control of municipal work, and ownership of the instrumentalities for its performance." This statement may perhaps bear the construction that towns and cities may be safely allowed to light their own streets and public buildings, but it is entirely consistent with its author's former uncompromising opposition to allowing municipalities to go into the business of manufacturing gas and electricity for sale for commercial purposes.

The position of our Supreme Court upon this question must not be misunderstood. Last year the House asked the opinion of the Court as to the constitutional power of the Legislature to pass laws enabling cities and towns to manufacture gas and electricity, first, for their own use, and, second, for sale to private customers. After consideration the Court concludes as to the first question, as follows: —

"*As a question of constitutional power*, we cannot distinguish the right to authorize cities and towns to buy gas or electricity for their use, from the right to authorize them to manufacture it for their use. We therefore answer the first question in the affirmative."

The question of the Legislature's constitutional power was the only question with which they had to deal, and they found in the constitution what they deemed to be sufficient authority to enable the Legislature to act, if it saw fit to do so.

Upon the second question, they found, as they say, more difficulty. They finally, however, reached the following conclusion: —

"If the Legislature is of opinion that the common convenience and welfare of the inhabitants of cities or towns will be promoted by conferring upon the municipalities the power of manufacturing and distributing gas or electricity for the purpose of furnishing light to their inhabitants, we think that the Legislature can confer the power. We therefore answer the second question in the affirmative."

I call attention to this opinion of the justices for the purpose of disabusing your minds of any impression that it contains in it anything in the nature of justification of the legislation except upon constitutional grounds.

I would be considered entirely lacking in a proper view of the appropriate scope of an argument upon this subject, if I did not refer to the analogy which is so often claimed to exist, that is, the alleged analogy of water-supply.

The Analogy of Water-Supply.

There are various other analogies, such as street-building, sewer-building, maintaining public schools, and so forth, which I find, according to the stenographer's notes, were referred to at the last hearing. But they are all easily distinguishable from the present proposed legislation. I will not discuss them, because I have not time. I discussed them fully last year, and can furnish a copy of my argument to anybody who may be interested in that branch of the discussion. The foundations upon which those powers rest are wholly different from those which underlie the legislation which is now proposed.

The analogy of water is admitted to be the most favorable analogy for the other side. It is the analogy that is always urged. If it does not hold, then, confessedly, none of the others hold. There are numerous natural differences, to which I will merely refer. Water is a natural product; gas and electricity are not. Water is generally taken from great ponds, so called, where every citizen has a right to go with his bucket and carry away as much

water as he pleases. The supply of water is merely the distribution of a natural commodity, which has none of the ear-marks of a manufactured product. It does not partake in any measure of the subtle and peculiar nature of gas or electricity. But passing these natural differences, let us come to the essential differences.

In the first place, the supply of water is indispensable to the performance of certain strictly municipal functions; for example, the extinguishment of fires. That has been held by our Courts to be a function which cities and towns are under obligation to perform. But, on the contrary, our Supreme Court has held, and that decision has never been overruled or questioned, that there is no legal obligation upon a city or town to light its streets. There is, therefore, no analogy between the furnishing of water in the performance of certain indispensable municipal functions, and the furnishing of gas or electricity, which cities and towns are under no obligation to furnish, even to travellers upon their highways.

In the second place, to supply water to every individual of a town or city is in itself the performance of a public function which can be performed in no other way. The necessity of every citizen to have pure water in abundance is such that a city or town that failed to furnish it to him at reasonable rates and in the best possible manner would fail in the performance of one of the most essential functions of civil government.

In the third place, the supply of water almost always necessarily involves the exercise of the right of eminent domain. This is a very important distinction, which is indicated in the opinion of the justices, to which reference has been made. A water company, in order to get to its customers from its reservoirs or sources of supply, must almost always go through private land, and must therefore almost necessarily exercise the right of eminent domain, — the highest right enjoyed, under our form of government, by sovereignty itself, except the right to tax, to which it is analogous. For that reason, water is more properly supplied by towns and cities, because it is more proper that towns and cities should exercise this great right of eminent domain than that private corporations should do so.

The fourth distinction is also one hinted at in the opinion of the justices. It is, that a supply of pure water can sometimes be furnished in no other way than by the exercise of public rights; whereas, everything goes to show that no man in this Common-

wealth, and no community in this Commonwealth, needs to go without lights if willing to pay for them.

But to come to the gist of the matter and to the main difference: *water is indispensable to the health and welfare of the community at large.* Any city or town which does not see to it that a supply of pure water is furnished to its inhabitants, has failed, as I have said, in the performance of one of the first functions of civil government. Artificial light is not essential to the health or to the life of the members of the community. It is at best a convenience, ordinarily a luxury, never an absolute necessity.

So that if any man will candidly and judicially examine into the foundations of the right of a municipality to supply itself with water, and compare those foundations with those which must underlie the right to supply artificial light, he cannot fail to come to the conclusion that no analogy exists between them. There is a fundamental difference between supplying an absolute necessity in the performance of a public function, and the voluntary manufacture and sale of an article of commerce.

The analogy runs the other way. The analogy from electric lights and gas is to street railroads, telephones, express companies, cab service, union depots, hotels, the manufacture of boots, shoes, or blankets, the sale of groceries, and the like.

Massachusetts has never heretofore permitted its cities and towns to indulge in any business speculations or manufacturing enterprises. The nearest she has ever come to committing that mistake was in permitting its towns and cities to give aid to railroad enterprises, — and what was the result? The State of Massachusetts invested $18,000,000 in the Troy & Greenfield Railroad, and it got out only about $6,000,000, losing two-thirds of its investment. Fifteen towns, I think, in the western part of the State, which invested to the limit of their ability, lost every cent they put in after the Commonwealth foreclosed its mortgage; and they have been down here, I believe, in past years, to ask remuneration from the State for the loss of their investments. More than one-half of the gross State debt of Massachusetts to-day arises out of two railroad loans, — one to the Troy & Greenfield Railroad, and the other to the Boston, Hartford, & Erie.

The same result has attended the granting of municipal aid to private business enterprises elsewhere, to say nothing of municipal ownership and management. The history of Bath, Me., is so melancholy in this respect that I cannot refrain from making

special reference to it. Suffering for the commonest municipal necessities, with everything at loose ends and out of repair, they yet for years taxed themselves $25 on a thousand on a high valuation in order to meet the interest on defaulted railroad bonds. The State of Maine made the mistake of permitting Bath and other towns of that Commonwealth to aid the Knox & Lincoln Railroad. The result has been many years of financial embarrassment and distress. The report of a special committee appointed to attempt to fund Bath's railroad debt pronounced it "a terrible burden," and referred to the city's participation in the enterprises as "fourteen years of bitter experience." These cities and towns had every reason to believe that the Knox & Lincoln Railroad, by connecting them together and putting them in easy communication with other places, would prove to be a genuine boon to the municipalities and to the business interests located in them. On the contrary, it has been an utter failure, and has resulted in imposing a grievous burden of municipal indebtedness, from which they have not been able to free themselves. Some of the towns were at last driven to attempt repudiation.

This has been the history of this sort of thing in all analogous cases throughout the country. If the lawyers on the committee will read Judge Dillon's statement of the result of this kind of legislation in other States, they will be struck and surprised with the uniformly disastrous results which have accompanied it. He says that "it cannot be denied that this species of legislation has been exceedingly mischievous in its results." In summing up the results of municipal aid to such corporations, he says: "Regarded in the light of its effects, there is little hesitation in affirming that this invention to aid the enterprises of private corporations has proved itself baneful in the last degree."

I have here a citation from another authority (Cook on Stock and Stockholders, section 92), where the unchecked exercise of this power of municipalities to aid enterprises of a private character is said to have entailed such a burden of taxation that in many States it has been found necessary to prohibit it by constitutional prohibition. He says: —

"In many States are found constitutional prohibitions rendering it unlawful for municipal corporations to make subscriptions or lend their credit to any incorporated company or enterprise not strictly and exclusively governmental in its nature and constitution. This is the case in Pennsylvania, Ohio, Illinois, New York,

Indiana, Missouri, Mississippi, and in some other States. In general, it will be found that these constitutional provisions prohibit in terms any subscriptions or lending of credit by any municipality in the State or by the State itself to any company, association, or corporation whatsoever."

If it be said that municipal aid to railroad corporations is not the same thing as municipal operation of electric light and gas plants, it will be admitted; but it bears close analogy to them, and the dangers are the same in both cases. Among these dangers is the creation of further municipal indebtedness.

Increase of Municipal Indebtedness.

Section 3 of the act which you have before you contemplates the issue of bonds, to run for a term not exceeding twenty years, at not more than five per cent. The aggregate amount of such bonds may equal five per cent. of the total valuation of the property of the municipality, and the indebtedness thereby created is not to be included in the limitation of indebtedness of the city or town. Let me read again from Judge Dillon. Speaking of municipal indebtedness, he says (sections 154 and 155): —

"It is estimated that the indebtedness of municipal and public corporations in this country has already reached the enormous sum of $1,000,000,000, and it is constantly increasing. A large portion of this indebtedness is evidenced by negotiable bonds which are held by thousands of persons at home and abroad as an investment. These bonds have been issued for a great variety of purposes, such as the erection of public buildings, the making of municipal improvements, and in payment of subscriptions for the stock of railway corporations, or as donations to aid them in the construction of their roads located in or near the municipality or public corporation thus extending its assistance.

"The power conferred upon municipal and public corporations to issue commercial securities for such purposes is of comparatively recent origin, and it has undeniably been attended with very serious, and it is, perhaps, not too strong a statement to add, disastrous, consequences. One of these is the stimulus which the long credit commonly provided for effectually supplies to over-indebtedness. The bonds usually fix a time, twenty or thirty years distant, for payment of the principal. Those who vote the debt and the councils or bodies which create it and issue the bonds, do so with-

out much hesitation, as the burden is expected to fall principally on posterity. A learned justice of the Supreme Court of the United States has very aptly described the effect witnessed as a *mania* for running in debt for public improvements. It has elsewhere been characterized as an *epidemic insanity* inducing extravagant corporate subscriptions to public works."

No matter what may be the constitutional foundations for this power, the result of the application of it has been nothing but disaster wherever the experiment has been tried.

This great mountain of municipal indebtedness is not confined to the newer, and therefore presumably more improvident, portions of our country. In Massachusetts the municipal indebtedness amounted, in 1888, to upwards of $96,000,000, and to-day it probably constitutes one-tenth of the entire municipal indebtedness of the United States. I read from a pamphlet prepared by Mr. A. D. Chandler, in 1889, called "Municipal Control of Commercial Lighting. Nationalism Analyzed," which is a mine of information upon this subject.

General Collins. — The municipal indebtedness of Massachusetts has since that time increased about $12,000,000.

Mr. Burdett. — In Massachusetts. And that will bring it up to —

General Collins. — $108,000,000.

Mr. Burdett. — Mr. Chandler says, "No State in the Union is believed to have so large a debt as Massachusetts; namely, $28,851,619. And the city and town indebtedness of no State in the Union is so large in proportion to its population as that of Massachusetts; namely, $96,756,916. Here is a total public indebtedness of $125,608,535. The adoption of the nationalist theory would point the way to an enormous increase of this indebtedness. The absorption or duplication of the lighting plants alone would require over $20,000,000." In that case we would have a municipal indebtedness in Massachusetts of $128,000,000; decidedly more than ten per cent. of the entire municipal indebtedness of the United States. It was true at the time this pamphlet was written that out of 351 municipalities in Massachusetts ten had an indebtedness of from seven per cent. to nine and one-half per cent. on their valuation. Danvers' indebtedness at that time was seven per cent. of its valuation; and while the ratio of increase in Danvers' valuation for 1888 over 1887 was only two and one-half per cent., the ratio of increase of its total liabilities for the same

period was fourteen per cent. I have not had an opportunity to bring these figures down to the present date, but I state them as of the time employed by Mr. Chandler.

Corruption of the Public Service.

The necessary enlargement and the almost inevitable corruption of the public service which would follow the passage of acts such as we have under consideration is in and of itself, to the minds of conservant thinkers, a sufficient objection to the legislation. The question is, do we want to increase or decrease the official classes in the United States? Do we want to have, as in Germany and France, and other continental countries, about every third man dressed in uniform of some description, belonging to either the civil or the military department of the public service? or do we want to have things left more as we have had them in the past, with the people governed as little as possible, and paying for as small a civil list as possible? The difficulty about this proposed legislation is that it is starting us in exactly the wrong direction. Up to this time we have been fleeing from centralization, fleeing from the increased power of government; and yet here is a serious proposition to turn around and go in just the opposite direction. Why, Mr. Chairman, is it not beyond dispute that we are what we are to-day as a people, and our industries are what they are to-day as industries, because we have, from the foundation of our government, practised precisely the opposite theories from those embodied in this bill? We have practised upon the idea that the more we encouraged individual enterprise, the better; the more inducements we gave for the investment of private capital, the better; the less we had to do with government, the better. And our policy has wisely gone so far as to encourage the investment of private capital in corporate form, so that it may be more effectively employed. But we are now asked to take the first step toward surrendering the idea of individual enterprise, and giving over our industries to be managed by public officers. Let them light our streets and supply our power; then let them run our street railroads, and absorb our telephones and telegraphs; let them gradually come into the management and control of all our quasi-public enterprises, and we shall have arrived at the goal of nationalism. What is "nationalism"? I understand it to be a theory of government which delegates as much as possible to the government, and leaves as little as possible to the individual — a theory which

is thoroughly undemocratic, unrepublican, and unAmerican. And there is no disguise of the programme. Pending before this very committee there are petitions for the enactment of a law to allow cities and towns to make light, *and to engage in all other lawful business* that the citizens of such cities and towns may desire to enter into. There is a petition now pending before the Committee on Labor for a State loan of three million dollars to cities and towns to enable them to build homes for the people, similar to State loans to railroad corporations to build their railroads. Before the Committee on Cities the "Nationalists' League," which I presume is a part of the same organization which is conducting the petitioner's case before your committee, have a petition pending as to permitting cities to erect dwelling-houses, and to let them at a rental. The absorbing of the telephone and telegraph lines, the running of the street railroads, the management of the express service, the ownership of union depots, and so on and so forth, are but successive steps in the same direction — in the direction of the surrender of individualism, and in the adoption of the idea of paternalism. But was it not, Mr. Chairman and gentleman, because our fathers objected to paternal forms of government, that they left their homes and crossed the sea, to establish here new forms of government, to inaugurate new industries, and to lay the foundation of a success more glorious than was possible under the old conditions?

(Adjourned to Tuesday, March 24.)

Tuesday, March 24, 1891.

Upon the reassembling of the committee, Mr. Burdett proceeded as follows: —

Mr. Chairman and Gentlemen, — At your session yesterday I had the privilege of advancing, in behalf of the electric-light companies, such reasons against this legislation as seemed to me pertinent, and I practically closed the consideration of all points that I desired to treat upon, with one exception, — the question of economy, involving the question of electric-lighting prices. I referred to the character of the legislation, to its broad and sweeping provisions, to the revolutionary idea contained in those portions of it which look to the embarking of the towns and cities of the Commonwealth in hazardous manufacturing enterprises. I next referred to the remonstrants, to their number and character, to the history of their business, and to the nature of their objections.

In considering the public objections to the pending bill, I insisted that it was contrary to our theories of town and city government; that there was no valid analogy between any employment now undertaken by municipalities and the manufacture and sale of gas or electricity, but that the analogy ran directly the other way, — from gas and electric lighting to electric railroads, electric telephones, electric telegraphs, and other industries of a quasi-public character.

In connection with the provision of the bill for the issue of bonds to pay for municipal plants to be established under it, I called your attention to the increase of municipal indebtedness which it would necessitate. I pointed out in this connection that municipal aid to railroads, which is the closest analogy of anything we have, has resulted uniformly and universally in financial disaster and public corruption.

When the hearing closed yesterday, I was discussing the effect of the necessary enlargement and the almost inevitable corruption of the public service, which would follow this legislation. I need add nothing to what I have already said upon that point, except to quote from the great work on "Liberty" by John Stuart Mill, in which, referring to the abuse of the powers of government and the source from which it arises, that writer says: —

"The mischief begins when, instead of calling forth the activity and powers of individuals and bodies, it substitutes its own activity for theirs."

No Economic Advantages.

The only excuse for the proposition which is before you is the claim that the public purse will be benefited by its adoption. No sober-minded citizen of Massachusetts can fail to recognize and admit the objections to the scheme. Nobody but a "nationalist" would for a moment pretend that this legislation was not surrounded with the gravest difficulties and uncertainties. But it is claimed that towns and cities can get their lights cheaper under municipal ownership than they can under private ownership. But it is not true. And if anything has been proved before you in these hearings, that has been proved. Even if it were true, it would make no difference to one entertaining my views on the public questions which are involved. According to my way of looking at the subject, the opportunity for a city or town to make or save a few dollars, more or less, ought not to induce us to inaugurate a

dangerous experiment and revolutionize all our theories and ideas of town and city government. But municipal lighting is not cheaper than private lighting. In the first place, a city or town cannot *produce* anything cheaper than private capital can produce it. If that be so, the municipalities in Massachusetts have received their lights up to this time at a fair price, unless the corporations have made a large and undue profit out of furnishing them. But that they have not received very much advance over the cost of production, appears from the undisputed figures as to their dividends and earnings which I have given you. But I need not rest my case upon that proposition, however sound it may be. I can afford to enter upon a careful study of the figures which experience has furnished us.

The community has been misinformed, misled, miseducated from the beginning until now upon this question of electric-lighting prices. But the time has now come when we are beginning to get at some of the facts in the case. Why, think of what has been placed before this committee by the other side, as affirmative evidence, to show that electric lights can be produced cheaper by a municipality than they can by a private corporation! A lot of extracts (not at the time, by the way, credited to their source) read from a book four years old, which the author has since repudiated. There is the beginning and the end of all the testimony which has been submitted upon the general question of the economy of the municipal production of electric lights. The man who wrote that book, said in Chicago, two years ago, according to the testimony before you: —

"I have closely studied the workings of almost every city plant, and, with but one or two exceptions, I would not now commend their operation. The officials of the smaller towns where municipal plants have been installed show an amount of crude ignorance of the subject that is truly appalling."

That is all I have to say about the extracts from Mr. Whipple's book, which have been put in here in lieu of testimony. I have something more serious to do than to fire shots at a ghost like that. What did we do? We produced two witnesses who knew what they were talking about, — Mr. Francisco and Mr. Gilbert. When Mr. Francisco had finished his testimony you must have been impressed with the fact that for the first time since these hearings began you had heard some real testimony, and had begun to get at some real facts as to the cost of the

operation of the municipal plants which now exist. Our friends on the other side, recognizing the force of it, and knowing that if it stood uncontradicted their claim to economy was gone, sent a gentleman up to Rutland to see what he could find out. He found nothing whatever to temper the force of Mr. Francisco's testimony. We would gladly have given him the facts if he had asked for them. But we did not deem them at all material to this inquiry. They amount simply to this, that a ruinous competition is going on in Rutland, and that Mr. Francisco's company is furnishing lights at much less than the cost of production, and is determined to furnish them for nothing, if necessary, rather than to be driven out of the field by unfair means.

I shall not attempt to go over Mr. Francisco's testimony in detail. He took up every case that was cited on the other side, and showed what the actual cost has been to produce electric lights under municipal ownership in the various places. After disposing of all the places to which attention had been called upon the other side, he took up other prominent instances, like Chicago, Ill., Easton, Pa., Xenia, O., and other places. Unfortunately, Mr. Gilbert had not at that time worked out this "table with unit," so called, which furnishes us such an exact measurement of the amount of light obtained in different places for the same amount of money. If that had been done, we could have applied it to the places named by Mr. Francisco, by eliciting the particular facts necessary for its application. But in a few places the application can be made. Let us take, for example, the first place that was named upon the other side — Bay City, Mich. Let us see if we can get at the facts. The lights in that city burn 2,421 hours per year, at a cost of $93.20 per lamp, or at the rate of 3.85 cents per lamp per hour. Dividing the nominal candle-power of the lights by the price per hour, we obtain, as the amount of light, measured in nominal candle-power, obtained in one hour for one cent, five hundred and nineteen. Compare this result with that obtained in Boston, one of the most expensive places in the United States in which to furnish electric lights, for the various reasons given by Mr. Gilbert. In Boston coal costs the company $3.89 a ton and upwards. In Bay City, the city buys all the shavings needed to run their steam plant for a year for $1,200; while coal formerly cost them more than twice that sum. And yet, notwithstanding the differences in favor of Bay City, she gets only 519 candle-power per hour for one cent, while Boston

gets, under contract at forty cents per light, 540 candle-power per hour for one cent.

Now, take Lewiston, for example. That is a municipal plant run by water-power. Without stopping to examine the figures, let me refer to a portion of Mr. Francisco's statement, which furnishes an excellent illustration of how the figures about the cost of the operation of municipal plants are frequently arrived at. He says: —

"Another feature of Lewiston is, that in the itemized account [of operating expenses] there are fifty or more different expenditures, ranging from fifty cents to $2,584, and yet there is no mention made of any description of five items that go to make up a considerable proportion of the cost of lighting in well-regulated companies; namely, power, interest on cost of plant, insurance, taxes, or depreciation. That does not appear in any form there among those items."

Just think of it! Think of people giving out figures as the cost of production and omitting therefrom the items of power, interest, insurance, taxes, and depreciation!

That they have no necessary surplus machinery appears from the last report of the superintendent, in which, after speaking of the necessity of enlarging the station, he says: "But whether the station is enlarged or not, we need an extra dynamo to use in case of accident, which is liable to happen at any moment, leaving part of the city in darkness."

The superintendent says in another part of his report: "In fact, the whole plant, poles, wires, lamps, and dynamos, will need reconstruction before the end of two years."

And that plant has only been in operation for about three years now!

Take the case of Hannibal, Mo., as another illustration. Street lights, according to Mr. Francisco's figures, cost $101, and private lights $91.71. Owing to a lack of necessary surplus apparatus, the streets were left in darkness upon five occasions, — three times by the lightning, and twice by the burning out of armatures. The mayor characterized the burning out of the armatures as an accident happening through ignorance and carelessness. For how long the loss of service was continued upon any of these occasions we are not informed. Such service would not be tolerated in the case of a company supplying lights by contract.

Now, what are the facts about Chicago, where we are asked to believe that the public lights cost the city only nineteen cents? The fact is, that they cost about thirty-five cents, as Mr. Francisco's figures proved conclusively. Coal costs only $1.33 a ton in Chicago, as against $3.89 and upwards in Boston. Upon the Chicago superintendent's own figures, with the addition of the items of water tax, interest on investment, loss of taxes, insurance, depreciation at five per cent, salaries and office-rent, the cost amounts to 34.9 cents per light per night. The city superintendent of the electric lights in Chicago frankly states, whenever asked, and has so stated in several communications which are public property, that in the figures given out from Chicago there are never included the items above named, or oil, waste, repairs, or like charges.

How about Topeka? The gentleman who has conducted the case of the petitioners saw fit to read about six lines of a letter from the Mayor of Topeka, not informing us that he was omitting about six times as much. That was his idea of fairness, I suppose. We did not know the fact until Mr. Francisco came here and told us of it. Under date of Feb. 12, 1890, the Mayor of Topeka, referring to the municipal electric-light plant, said, "We think we have got rather a bad bargain. . . . Our lights so far have been very unsatisfactory. My own opinion of the matter is that it would, no doubt, be much cheaper in the end for the city to have contracted with some of our electric-light companies here to furnish the city with its lights at so much per light per month. We would then have known, at least, just what they cost." He concludes by saying, "We have found ours a very expensive luxury, and there are so many expenses coming up that we cannot foresee."

Now, let me take a final and very striking instance, which furnishes a comparison which is perfectly fair in every respect, — the cities of Marietta, O., and Parkersburg, W. Va. They are situated about twelve miles apart, on opposite sides of the Ohio river. They, undoubtedly, obtain coal at substantially if not exactly the same price, and all the local conditions are the same; they get the same light, the same kind of light, as I understand the testimony. In the case of Marietta, where there is a municipal plant, the light costs at the rate of 4.5 cents per hour; in the case of Parkersburg, where the light is furnished by a private corporation, it costs them only 2.6 cents per hour.

I now come to the consideration of the testimony of Mr. Gilbert, another man who, as everybody will concede, knows what he is talking about when he is dealing with electric-lighting matters. He made himself thoroughly conversant with the facts and figures as to the municipal plants in Bangor, Me., and Danvers, Mass., because these are both near at hand, and are both advertised far and wide throughout the country as shining illustrations of the success of municipal control.

Bangor.

In the case of Bangor it is claimed that the city lights are produced at a cost of twelve and three-fourths cents per light per night. Now, what is the fact about it? Upon their own figures, corrected as I shall indicate, the cost of producing their lights by water-power is 24.6 cents per light per night; and, when reduced to a steam basis, the cost is 40.14 cents per light per night. As to the character of the service there, you have had some evidence. My information is that it is very poor. But whatever the service is, the cost is not $12\frac{3}{4}$ cents, but 24.6 cents by the use of water-power, and 40.14 cents on a steam-power basis. In arriving at these results, Mr. Gilbert did not take into his calculation anything for surplus apparatus, which ought to be from 10 to 20 per cent., according to all the testimony you have before you, nor make any allowance for damages, either to persons or property, or in patent litigation, nor reckon in anything for the use of water-power, although the water department of the city of Bangor charges every other department large sums for water; nor did he reckon any interest on any portion of the water plant or upon the building, or anything for rental, either of power or of the premises. He simply added interest on the investment, at the same rate they pay on their city bonds, loss of taxes at the city rate, depreciation at five per cent., and a very small item for insurance, with the result which I have stated.

Danvers.

Now we come to the case of Danvers, the model near at hand which is held up before us. This plant has been run by the municipality for several years, not only for their own convenience, but for the purpose of demonstrating to Massachusetts and to the world that a municipality can produce its lights cheaper than a

private corporation. Everything is favorable for their experiment. They have no $110 poles, such as we have to have here in Boston; and no $350 roof structures to build and maintain. They use poles and trees in the public streets without limit and without price, and have otherwise prosecuted their business under the most favorable conditions. If Danvers fails, their whole case fails. Now, how can we get at the facts of the case? In the first place, we must find some common unit of measurement, some yardstick that will measure just so much and no more wherever it is used. And we have found it. I refer to this little "table with unit," which has been prepared by Mr. Gilbert. It should be thoroughly understood by every member of your committee. It is made up by taking the yearly cost of a lamp, which, of course, can be readily arrived at, and dividing that cost by the number of hours it burns during the year. That gives us the cost per hour of each light. Then, dividing the nominal candle-power of the light by the cost per hour, we get the amount of light, measured in candle-power, that can be obtained in one hour for one cent. Suppose, for example, that the nominal candle-power of your lamp is 2,000, and that it costs you four cents per hour, you would be getting for one cent, for the same length of time, 2,000 divided by 4, or 500. That is mathematically exact, and is fair for everybody.

I take pleasure in handing to the committee copies of the "table with unit," which I refer to.

(Mr. Burdett at this point submitted copies of the following table.)

Table with Unit.

Burning Every Night in the Year.	Total Hours Burned per Year.	Average Hours Burned per Night.	Nominal Candle-Power.	Price per Year.	Price per Night	Price per Hour.	Candle-Power furnished per Hour for One Cent.
All Night,	3,939	10 h. 48 m.	2,000	$219 00	.60	.05 $\frac{56}{100}$	359$\frac{4}{5}$
do.	do.	do.	1,200	219 00	.60	.05 $\frac{56}{100}$	215$\frac{1}{5}$
do.	do.	do.	2,000	200 75	.55	.05 $\frac{1}{10}$	392$\frac{1}{6}$
do.	do.	do.	1,200	200 75	.55	.05 $\frac{1}{10}$	235$\frac{1}{3}$
do.	do.	do.	2,000	182 50	.50	.04$\frac{5}{8}$	432$\frac{1}{2}$
do.	do.	do.	1,200	182 50	.50	.04$\frac{5}{8}$	259$\frac{1}{2}$
do.	do.	do.	2,000	164 25	.45	.04$\frac{1}{6}$	479$\frac{1}{2}$
do.	do.	do.	1,200	164 25	.45	.04$\frac{1}{6}$	287$\frac{3}{4}$
do.	do.	do.	2,000	146 00	.40	.03 $\frac{7}{10}$	540$\frac{1}{2}$
do.	do.	do.	1,200	146 00	.40	.03 $\frac{7}{10}$	324$\frac{1}{3}$
Dusk to 1 A.M.	2,490	6 h. 49 m.	2,000	127 75	.35	.05$\frac{1}{8}$	389$\frac{4}{5}$
do.	do.	do.	1,200	127 75	.35	.05$\frac{1}{8}$	234
do.	do.	do.	2,000	109 50	.30	.04$\frac{2}{5}$	454$\frac{1}{2}$
do.	do.	do.	1,200	109 50	.30	.04$\frac{2}{5}$	272$\frac{3}{4}$
do.	do.	do.	2,000	91 25	.25	.03$\frac{2}{3}$	545$\frac{1}{2}$
do.	do.	do.	1,200	91 25	.25	.03$\frac{2}{3}$	327$\frac{1}{4}$
Dusk to 12 M.	2,125	5 h. 49 m.	2,000	127 75	.35	.06	333$\frac{1}{3}$
do.	do.	do.	1,200	127 75	.35	.06	200
do.	do.	do.	2,000	109 50	.30	.05$\frac{1}{6}$	387
do.	do.	do.	1,200	109 50	.30	.05$\frac{1}{6}$	232$\frac{1}{4}$
do.	do.	do.	2,000	91 25	.25	.04 $\frac{3}{10}$	465
do.	do.	do.	1,200	91 25	.25	.04 $\frac{3}{10}$	279
*Danvers, Mass.	1,339	4 h. 51 m.	1,200	$69 52$\frac{1}{5}$	.27$\frac{1}{4}$	.05$\frac{6}{8}$	213$\frac{1}{3}$
†Danvers, Mass.	1,236	do.	1,200	62 57	.24$\frac{1}{2}$	.05 $\frac{1}{16}$	237

* First 13 months to Feb. 1, 1890, 276 nights.

† 12 months, ending Feb. 1, 1891, 255 nights.

The above figures on Danvers were taken from the Danvers Town Reports, including items charged in *Lighting account*, *Miscellaneous account*, and *Auditor's report*, which distinctly state were for Electric Lighting, to which is added Town's loss of taxes and 5 per cent. depreciation.

Moonlight schedule not figured, opinions varying as to nights or hours required.

Danvers puts up with a service, so far as the hours of burning are concerned, which no town or city is content to receive from a private corporation. They get a service, according to their own reports, of only 1,236 hours in a year. The least that cities and towns obtain by contract is 2,125 hours, where lights burn every night from dusk till midnight. But, leaving that aside, and assuming that Danvers gets just as much light, and just as good light, as anybody else, what does it cost her? The following figures are taken from Mr. Gilbert's testimony. He obtained them all from the town reports of Danvers. He has taken no items except such as unquestionably apply to the electric-lighting account, and he has added nothing to them except depreciation and loss of taxes. Interest is included in the municipal report. The plant was started January 2, 1889.

First report, Jan. 2, 1889, to Feb. 1, 1890: —

Bills paid to Feb. 1, 1889	$491 07
Maintenance for year to Feb. 1, 1890	3,815 81
Committee's services and expenses	184 17
Insurance	162 50
Lawyer's fees	174 17
Printing	51 75
Liabilities; committee's services	80 00
A. H. Merrill, team	4 00
J. Frank Dale, expenses	20 06
D. N. Crowley, legal services	25 00

To which are added: —

Taxes on investment, at town rate, for thirteen months,	260 50
Depreciation, at five per cent., for thirteen months	812 50
Total	$6,081 53
Less supplies on hand	583 00
Total actual cost	$5,498 53

Number of street lights (excluding the two in the station, which would not be paid for by the town under the contract system), 73; nominal candle-power, 1,200. Number of hours burned in thirteen months, 1,339.

Reduced to basis of twelve months, or 1,236 hours, gives as yearly cost per lamp, $69.52\frac{1}{5}$, or at the rate of $5\frac{5}{8}$ cents per lamp per hour. Reduced to nominal candle-power per hour for one cent, the result is $213\frac{1}{3}$ candle-power.

These items are all in the town reports, but they are not found together. They have not kept their electric-light account so that you can see all the items of cost and maintenance at a glance. Mr. Gilbert was obliged to go through all the accounts in the town report, and pick out those items which related to electric lighting. But no single item has been taken which has not the electric-light ear-marks on it, unmistakably; every item that is doubtful is left out.

Second report, Feb. 1, 1890, to Feb. 1, 1891: —

Cost as per superintendent's report, less supplies on hand	$3,419 79
F. H. Caskins, services and expenses	100 00
J. T. Lynch, services	23 00
Samuel C. Putnam, services	25 00
A. F. Hayward, care of electric lights	10 00
Add: —	
Loss of taxes, at town rate	240 00
Depreciation, at 5 per cent.	750 00
Total actual cost	$4,567 79

Number of street lamps, 73; nominal candle-power, 1,200. Number of hours of burning, 1,236. Price per year, $62.57. Price per hour, $5\frac{1}{16}$ cents. Nominal candle-power per hour for one cent, 237.

Now, if you will take that result and compare it with this "table with unit," you will find that the only substantial equivalent, elsewhere, of the Danvers cost, is where a town or city gets 1,200 candle-power lights from a private corporation till midnight at about thirty cents per light. According to this table, the neighboring city of Salem gets from the local company, at forty-five cents per light for an all-night light of 2,000 candle-power, about twice as much light per hour for one cent as Danvers does.

An objection was made here the other day about which I desire to speak for a moment at this time. It was asked, "Have you

taken any other place just like Danvers, where the days and hours of burning are just the same, and made the same figures?" The answer was, "No; because it is impossible to do so; no other place getting its light by contract gets so few hours of burning as does Danvers."

But what can be done? We can take the actual burning hours of any other place, and it will do as well, as, of course, it is simply a matter of proportion. You will remember that I asked the treasurer of the Salem Company what the average burning hours of his street lights are, and he said ten hours and a half. Salem, therefore, burns her street lights 3,832 hours per year, which, at forty-five cents a night, gives a cost of $164.25 per year, or at the rate of 4.28 cents per light per hour; which, reduced to candle-power per hour, gives us 467.29 candle-power per hour for one cent. So that, taking the exact state of facts in Danvers, and the exact state of facts in Salem, we find the difference is almost two to one in favor of the private plant in Salem. This means that the Salem Electric Light Co., if Danvers were near by, could safely supply Danvers with the same quality and amount of light, by actual measurement, as it now gets, at a little more than half the present cost to Danvers.

The Chairman. — I want to ask you one question. Is the cost per light in Salem figured out on the basis of all-night burning?

Mr. Burdett. — Yes, sir; from the actual burning. There would be, in that case, I suppose, some deduction to be made. Let us see. You would add to the Danvers price, if I remember correctly, about 50 per cent. for all-night service, and that would be at the rate of forty-five cents a night for what Danvers gets — that is, a 1,200 candle-power lamp, as against a 2,000 candle-power lamp in Salem. She is paying at the same rate for an inferior article as Salem is for the best article.

The Chairman. — I wanted to ask that question. I think that is all.

Mr. Burdett. — We do not claim that it costs twice as much to run all night as it does to run until twelve o'clock. I think the testimony is undisputed that it costs at least 50 per cent. more.

The Chairman. — That is all the question I have.

Mr. Burdett. — Consider one other thing in this connection, which is significant. Look at the report of the Gas and Electric Light Commissioners, and ascertain what various cities and towns now pay by contract for substantially the same kind and quantity

of light as they get in Danvers. I find thirty-one towns and cities in Massachusetts which are supplied with 1,200 candle-power lights on the midnight schedule, burning under substantially the same conditions, as I understand them, that they are burning the lights in Danvers. And the average price paid by contract in those thirty-one cities and towns is twenty-six cents per lamp per night, or four cents less than the municipal cost of production in Danvers.

I have now stated all the considerations upon this subject which I think are of prime importance. But I desire to pay some attention to the petitioners, and I will do so in a very few words in closing. There is not a single town or city, except Danvers, which, according to my recollection, comes here with a real grievance. Danvers is in a position where it needs help of some kind. They have assumed the law to be what it is not, and the result is that they have a certain number of bonds outstanding which are to-day not worth the paper they were written on. I have nothing to say against a law to legalize the bonds issued by the town of Danvers. But that is no reason why Danvers, or any other town, should be allowed to go farther than she has already gone and embark in the business of manufacturing and selling electricity. To-day, the citizens of Danvers have a strictly municipal plant, which, like honest men, they want to pay for, and which is not paid for in the securities which have heretofore been issued. But if, as a matter of expediency and exigency, you should legalize these securities, there is no reason why the whole theory and practice of Massachusetts town government should be upset.

As I reside in Brookline, I may be pardoned for referring to the position of that town for a moment. They have not petitioned, and in my judgment they never will petition, for any such law as is embodied in the bill before you. Their petition is that the Legislature will pass "a proper law," giving to cities and towns of the Commonwealth a right to manufacture and supply themselves with electric lights *for municipal purposes* only. They have not for a moment considered the proposition of allowing the town of Brookline, with its vast property interests, to go into the hazardous business enterprise of manufacturing and selling gas and electricity for commercial purposes.

The city of Boston has not been represented here. One of the members of the Common Council, an excellent gentleman, whose

personal acquaintance I have the honor to enjoy, gave you his ideas, but expressly disclaimed any official character as a witness. He gave certain estimates of the probable cost of a municipal electric-light plant in Boston. It turned out that his figures were furnished by a corporation which was subsequently involved in patent litigation, the result of which was that the machinery manufactured and supplied by it was adjudged to be an infringement of certain letters-patent, and the further use of which was enjoined by the courts of the United States. What an investment that would have been for Boston!

I do not feel that I am justified in imposing upon the committee any further consideration of the special features existing in the cases of the several petitioning municipalities. I have thought I could better employ my time in suggesting the general objections which obtain to the legislation that is proposed. These objections apply equally well to special and general legislation, for if you permit one town to go into this business, how can you deny the right to others? The real question for you to decide, gentlemen, is whether you will take this step backwards; and if you think it is undesirable to do so, you ought to meet the issue squarely, helping Danvers out of her difficulty, if it can be done without violating the general principle involved, and let the other petitioners have leave to withdraw.